

Before the
Federal Communications Commission

Washington, D.C. 20554

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In the Matter of) MM Docket No. 98-155
) RM-9082
Amendment of Section 73.202(b)) RM-9133
(Table of Allotments))
FM Broadcast Stations)
)
Alva, Mooreland, Tishomingo, Tuttle,)
and Woodward, Oklahoma)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

OPPOSITION TO MOTION TO HOLD IN ABEYANCE

Ralph Tyler ("Mr. Tyler"), licensee of KTSH(FM), Tishomingo, Oklahoma, by his attorneys, hereby respectfully opposes the "Motion to Hold in Abeyance" filed April 1, 1999, by Chisolm Trail Broadcasting Co., Inc. ("Chisolm"), licensee of KXLS(FM), Alva, Oklahoma. In a truly remarkable abuse of the Commission's processes, and contrary to established law, Chisolm has filed its obstructive and reprehensible pleading. In the strongest terms possible, Mr. Tyler opposes this motion on the following grounds.

Chisolm wants the Allocations Branch to stop working on Mr. Tyler's proposal to reallocate Channel 259C3 from Tishomingo to Tuttle, Oklahoma, until the Audio Services Division acts on complaints Chisolm has filed against Mr. Tyler and South Central Oklahoma Christian Broadcasting, Inc. ("SCOCBI"), the permittee of KAZC(FM), Tishomingo, Oklahoma. In its Motion Chisolm rehashes its now-familiar litany of charges against Mr. Tyler and SCOCBI. Mr. Tyler and SCOCBI have responded to

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Chisolm's charges in the proper forum, and there is no need to respond to them once more.

Therefore, Mr. Tyler herein responds solely to Chisolm's request to hold this proceeding in abeyance. Chisolm's Motion must be denied because, quite simply, its request is contrary to established law.

Chisolm requests that "in the event the Allocations Branch determines it is ill-equipped to resolve the substantial and material questions of fact concerning Tyler's character qualifications in this allotment proceeding, the Branch defer issuing a Report and Order in this proceeding at least until after the Audio Services Division has had an opportunity to review Chisolm's Informal Objection and act on the pending KAZC license application." Chisolm cites not one shred of precedent to support its obstructive request. Chisolm cannot cite such precedent because the law is contrary to Chisolm's position.

As recently as March 19, 1999, the Commission reiterated its settled position that "It would not be conducive to the efficient transaction of Commission business to expand the scope of an FM allotment rulemaking proceeding to other [real-party-in-interest] issues"; and an "allotment rulemaking proceeding is not the appropriate forum to resolve such an issue." See *Tylertown, Mississippi*, DA99-531, released March 19, 1999, para. 8.

What is really going on here is Chisolm's desperate effort to thwart the Commission's reallocation of Channel 259C3 from Tishomingo to Tuttle because such a reallocation will bar the lucrative reallocation of Chisolm's station KXLS to the Oklahoma City area. Mr. Tyler previously raised this as a motive for Chisolm's

inappropriate conduct in this rule making proceeding, and Chisolm has not refuted Mr. Tyler's charge.

Mr. Tyler has previously invoked the provisions of Title 47 C.F.R. §1.52 against Chisolm's counsel, and does so again. That rule provides that "The signature by an attorney constitutes a certificate by him that he has read the document; that to the best of his knowledge, information and belief there is good ground to support it; and that is not interposed for delay." (Emphasis supplied). Chisolm's counsel's signing of the subject motion violates this rule because it is contrary to established precedent (restated just 12 days before the attorney signed the motion), and the motion is on its face interposed for delay.

Chisolm knows very well that if Channel 259C3 is reallocated from Tishomingo to Tuttle, Chisolm's hopes vanish for upgrading Chisolm's station. Chisolm could really care less about Mr. Tyler's standing with the Commission. Chisolm wants instead to obstruct the rule making proceeding for its own cynical profit-driven reasons.¹ The Commission can and should send Chisolm a clear message that this kind of abusive

¹ Chisolm's position is also absurd. The Commission's decision on whether to allot Channel 259C3 to Tuttle will turn on considerations set forth in Section 307(b) of the Communications Act of 1934, as amended. It will not depend on whether the proponent of the rule making proceeding will be permitted to utilize the channel. If, for example, the proponent of the rulemaking proceeding were to sell the affected station during the pendency of the rule making proceeding, the new owner would be responsible for constructing the modified facility. If, ultimately, the original proponent of the rule making proceeding were to be disqualified by the FCC from holding a broadcast license, that disqualification would not adversely affect the reallocation of the channel. Thus, the Commission has heretofore quite properly concluded that the rulemaking and complaint proceedings are independent of one another.

conduct will not be tolerated. That message should take the form of prompt positive action on Mr. Tyler's request to reallocate Channel 259C3 to Tuttle, Oklahoma.

Wherefore, Mr. Tyler requests the Commission to promptly deny Chisolm's Motion to Hold in Abeyance.

Respectfully submitted,

RALPH TYLER

A handwritten signature in black ink, appearing to read 'Ralph Tyler', with a large circular flourish at the beginning and a horizontal line extending to the right.

By:

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April 13, 1999

CERTIFICATE OF SERVICE

I, Patricia A. Neil, a secretary in the law offices of Smithwick & Belendiuk, P.C., certify that on the 13th of April, 1999, copies of the foregoing were sent via First Class Mail, postage prepaid, to the following:

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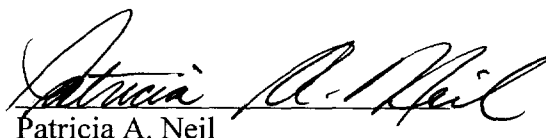
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